

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION**

BEST CHAIRS INCORPORATED,)	
Plaintiff)	
v.)	Case No. 3:14-cv-00067-RLY-WGH
)	
FACTORY DIRECT WHOLESALE,)	
LLC, EASTERN ENTERPRISES)	
LLC, PAY LESS HERE LLC,)	
HANPING LIU, ROWLAND)	
DIRECT WHOLESALE, JOHN DOE)	
JANE DOE AND UNKNOWN OTHERS,)	
Defendants.)	

RESPONSE IN OPPOSITION TO
MOTION FOR CLERK’S ENTRY OF DEFAULT [DOC 98]

Defendants Hanping Liu, Eastern Enterprises, LLC, and Pay Less Here LLC (collectively, the “Newly Added Defendants”) hereby oppose the Motion for MOTION for Clerk's Entry of Default [#098] filed by Plaintiff Best Chairs Incorporated (“BCI”).

The Newly Added Defendants were first named in BCI’s amended complaint filed January 12, 2015.

I. THE NEWLY ADDED DEFENDANTS WERE NOT PROPERLY SERVED.

Per FRCP 55(a), a default may only be entered against a party that “has failed to plead or otherwise defend.” The time for pleading or defending is triggered by service. FRCP 12(a)(1)(A)(i) (“A defendant must serve an answer: (i) within 21 days after being served with the summons and complaint”)

None of the Newly Added Defendants have been served. BCI’s proofs of service consist of certified mail receipts showing that they were signed by persons *other than* the Newly Added Defendants.

Newly Added Defendant	Receipt Signed By	BCI's "Evidence"
Hanping Liu	Jiali xie	<p>SENDER: COMPLETE THIS SECTION 08/15</p> <p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to:</p> <p>Hanping Liu CEO Eastern Enterprises, LLC 2855 N. Berkeley Lake Road Duluth, GA 30096</p> <p>2. Article Number (Transfer from service label) 7006 0810 0006 0077 6901</p> <p>PS Form 3811, July 2013 Domestic Return Receipt</p> <p>[#098-1]</p> <p>COMPLETE THIS SECTION ON DELIVERY</p> <p>A. Signature X Jiali Xie <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) Jiali Xie C. Date of Delivery 8/26/15</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™ <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery</p> <p>4. Restricted Delivery? (Extra Fee) <input checked="" type="checkbox"/> Yes</p>
Eastern Enterprises, LLC	Jiali xie	<p>SENDER: COMPLETE THIS SECTION 08/15</p> <p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to:</p> <p>Hanping Liu Eastern Enterprises, LLC 2855 N. Berkeley Lake Road Duluth, GA 30096</p> <p>2. Article Number (Transfer from service label) 7006 0810 0006 0077 6916</p> <p>PS Form 3811, July 2013 Domestic Return Receipt</p> <p>[#098-2]</p> <p>COMPLETE THIS SECTION ON DELIVERY</p> <p>A. Signature X Jiali Xie <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) Jiali Xie C. Date of Delivery 8/26/15</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™ <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery</p> <p>4. Restricted Delivery? (Extra Fee) <input checked="" type="checkbox"/> Yes</p>
Pay Less Here LLC	Reyna [unintelligible]	<p>SENDER: COMPLETE THIS SECTION 08/15</p> <p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to:</p> <p>Hanping Liu Pay Less Here LLC 10384 Royal Terrace Alpharetta, GA 30022</p> <p>2. Article Number (Transfer from service label) 7006 0810 0006 0077 6871</p> <p>PS Form 3811, July 2013 Domestic Return Receipt</p> <p>[#098-3]</p> <p>COMPLETE THIS SECTION ON DELIVERY</p> <p>A. Signature X Reyna <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) Reyna Garcia M. C. Date of Delivery 8/26/15</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™ <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery</p> <p>4. Restricted Delivery? (Extra Fee) <input checked="" type="checkbox"/> Yes</p>

Although each of these mail deliveries were addressed to Hanping Liu, he did not sign any of them. Thus, none of the Newly Added Defendants have been served, so the time for them to

respond has not expired, let alone begun. Accordingly, the prerequisite for default of FRCP 55(a), namely that a party that “fail[] to plead or otherwise defend,” has not occurred, so default is improper.

II. THE TIME FOR THE NEWLY ADDED DEFENDANTS TO RESPOND HAS NOT ELAPSED.

There is a second reason why BCI’s Motion for Clerk’s Entry of Default should be denied – the Court set April 16, 2015 as the date for them to file a Motion to Dismiss in response to the Amended Complaint. Even if the Court finds that the Newly Added Defendants were properly served (and they were not), they still have time to respond. The Order states:

In the event there are additional motions to dismiss for lack of personal jurisdiction or for failure to state a claim with respect to newly-added defendants, those motions must be filed on or before April 16, 2015.
[#101]

A “motion to dismiss” would be an action to “defend” against BCI’s Amended Complaint, and the Newly Added Defendants contend that this Court lacks personal jurisdiction over them and that the Amended Complaint fails to state a claim. As such, they have not “failed to plead or otherwise defend,” so the prerequisite for granting default under FRCP 55(a) has not been occurred.

III. CONCLUSION

For the foregoing reasons, BCI’s Motion for Default should be denied.

Respectfully submitted,

By: s/Paul B. Overhauser
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing is being filed electronically, and notice hereof will automatically be sent to all counsel of record that participate in electronic filing, by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

By: s/Paul B. Overhauser
Paul B. Overhauser